

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

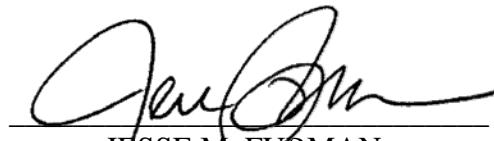
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ACCENT DELIGHT INTERNATIONAL LTD., :
:
Plaintiff, : 18-CV-9011 (JMF)
:
-v- : ORDER
:
SOTHEBY'S, INC. et al., :
:
Defendant. :
:
----- X

JESSE M. FURMAN, United States District Judge:

Attached to this order is Court Exhibit 4, which is the final jury charge that was read to the jury on the record this morning, January 30, 2024.

SO ORDERED.

Dated: January 30, 2024
New York, New York



JESSE M. FURMAN
United States District Judge

COURT EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
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ACCENT DELIGHT INTERNATIONAL LTD. :
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Plaintiff, :
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-v- : 18-CV-9011 (JMF)
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SOTHEBY'S, INC. et al., :
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Defendants. :
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JURY CHARGE

January 2024

Accent Delight International Ltd. v. Sotheby's, Inc. et al.
 No. 18-CV-9011 (JMF)
 Jury Charge

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I. GENERAL INTRODUCTORY CHARGES

2 Members of the jury, you have now heard all of the evidence and the lawyers' closing
3 arguments. It is my duty at this point to instruct you as to the law. I am going to read my
4 instructions to you. It is not my favorite way to communicate — and not the most scintillating
5 thing to listen to — but there is a need for precision, and it is important that I get the words just
6 right, and so that is why I will be reading.

7 I have given you a copy of my instructions to follow along because they cover many
8 points. Please limit yourself to following along; that is, as tempting as it may be, do *not* read
9 ahead in the instructions. If you find it easier to listen and understand while you are following
10 along with me, please do so. If you would prefer, you can just listen and not follow along.

11 In the unlikely event that I deviate from the written instructions, it is my oral instructions
12 that govern and that you must follow. But you may take your copy of the instructions with you
13 into the jury room so you can consult it if you want to re-read any portion of the written charge
14 to facilitate your deliberations.

15 For now, listen carefully and try to concentrate on the substance of what I'm saying. You
16 should not single out any instruction as alone stating the law. Instead, you should consider my
17 instructions as a whole when you retire to deliberate in the jury room.

18 My instructions to you will be in three parts.

19 First, I will give you general instructions — for example, about your role as the jury,
20 what you can and cannot consider in your deliberations, and the burden of proof.

21 Second, I will describe the law that you must apply to the facts as you find them to be
22 established by the evidence.

Finally, I will give you some instructions for your deliberations.

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1

2 Role of the Court and the Jury

3 You, the members of the jury, are the sole and exclusive judges of the facts. You must
4 weigh and consider the evidence without regard to sympathy, prejudice, or passion for or against
5 any party. It is your duty to accept my instructions as to the law and to apply them to the facts as
6 you determine them. If either party has stated a legal principle differently from any that I state to
7 you in my instructions, it is my instructions that you must follow.

8

9 The Parties

10 As you know, the Plaintiff in this case is a company called Accent Delight International
11 Ltd., owned by a trust established for a man named Dmitry Rybolovlev and his family, and the
12 two Defendants are Sotheby's and its subsidiary Sotheby's, Inc. In reaching your verdict, you
13 must remember that all parties stand equal before a jury in the courts of the United States.
14 Neither party is entitled to any greater or lesser consideration by you. The fact that the parties
15 are entities is irrelevant. So too, it is also irrelevant that some of the entities in this case are
16 foreign entities and that Mr. Rybolovlev is a foreign national. All litigants are equal before the
17 law and each party in this case is entitled to the same fair consideration that you would give any
18 other party.

19

20 Persons Not on Trial

21 Some of the people who may have been involved in the events leading to this trial are not
22 on trial. This does not matter. There is no requirement that all potential defendants be named in
23 the same proceeding. You may not draw any inference, favorable or unfavorable, toward either
24 party from the fact that any person was not named as a defendant in this case, and you may not

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1 speculate as to the reasons why other people or entities are not on trial before you now. Those
2 matters are wholly outside your concern and have no bearing on your function as jurors in
3 deciding the case before you.

4

5 Conduct of Counsel

6 The personalities and the conduct of counsel are not in any way at issue. If you formed
7 opinions of any kind about any of the lawyers in the case, favorable or unfavorable, whether you
8 approved or disapproved of their behavior, those opinions should not enter into your
9 deliberations.

10 In addition, remember that it is the duty of a lawyer to object when the other side offers
11 testimony or other evidence that the lawyer believes is not properly admissible. Therefore, you
12 should draw no inference from the fact that there was an objection to any testimony or evidence.
13 Nor should you draw any inference from the fact that I sustained or overruled an objection.
14 Simply because I have permitted certain testimony or evidence to be introduced does not mean
15 that I have decided on its importance or significance. That is for you to decide.

16

17 Direct and Circumstantial Evidence

18 There are two types of evidence that you may properly use in reaching your verdict. The
19 first type is direct evidence. Direct evidence of a fact in issue is presented when a witness
20 testifies to that fact based on what he or she personally saw, heard, or otherwise observed
21 through the five senses. The second type of evidence is circumstantial evidence. Circumstantial
22 evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts.

23 There is a simple example of circumstantial evidence that is often used in this courthouse.
24 Assume that when you came into the courthouse this morning, the sun was shining and it was a

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1 nice day outside. Also assume that the courtroom shades were drawn and you could not look
2 outside. Assume further that as you were sitting here, someone walked in with an umbrella that
3 was dripping wet, and then, a few moments later, somebody else walked in with a raincoat that
4 was also dripping wet.

5 Now, because you could not look outside the courtroom and you could not see whether it
6 was raining, you would have no direct evidence of that fact. But, on the combination of facts
7 that I have asked you to assume, it would be reasonable and logical for you to conclude that it
8 was raining.

9 That is all there is to circumstantial evidence. You infer on the basis of your reason,
10 experience, and common sense from one established fact the existence or the nonexistence of
11 some other fact. The matter of drawing inferences from facts in evidence is not a matter of
12 guesswork or speculation. An inference is a logical, factual conclusion that you might
13 reasonably draw from other facts that have been proved. It is for you, and you alone, to decide
14 what inferences you will draw.

15 Importantly, circumstantial evidence may be given as much weight as direct evidence.
16 The law makes no distinction between direct and circumstantial evidence. It asks only that you
17 consider all the evidence presented.

18

19 Limited Purpose Evidence

20 If certain testimony or evidence was admitted or received for a limited purpose, you must
21 follow the limiting instructions I have given.

22

23 What Is and What Is Not Evidence

24 What, then, is the evidence in the case?

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1 The evidence in this case is (1) the sworn testimony of the witnesses, (2) the exhibits
2 received into evidence, and (3) any stipulations made by the parties. Nothing else is evidence.

3 A stipulation is an agreement between parties as to what certain facts were or what the
4 testimony would be if certain people testified before you. The stipulations are the same for your
5 purposes as the presentation of live testimony. You should consider the weight to be given such
6 evidence just as you would any other evidence.

7 As I just said, anything other than the sworn testimony of the witnesses, the exhibits
8 received into evidence, and any stipulations made by the parties is not evidence. For example,
9 the questions posed to a witness are not evidence: It is the witnesses' answers that are evidence,
10 not the questions. In addition, exhibits marked for identification but not admitted by me are not
11 evidence; nor are materials brought forth only to refresh a witness's recollection. Moreover,
12 testimony that has been stricken or excluded by me is not evidence and may not be considered by
13 you in rendering your verdict.

14 Along these lines, you will recall that, among the exhibits received in evidence, some
15 documents are redacted. "Redacted" means that part of the document was deleted or blacked
16 out. As I previously told you, you are to concern yourself only with the part of the document
17 that has been admitted into evidence. You should not consider any possible reason why the other
18 part of it has been deleted or blacked out.

19 Arguments by the lawyers are also not evidence. What you heard during the opening
20 statements and summations is merely intended to help you understand the evidence and reach
21 your verdict. If your recollection of the facts differs from the lawyers' statements, you should
22 rely on your recollection. If a lawyer made a statement during his or her opening or summation

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1 and you find that there is no evidence to support the statement, you should disregard the
2 statement.

3 Finally, any statements that I may have made during the trial or during these instructions
4 do not constitute evidence. At times, I may have admonished a witness or directed a witness to
5 be responsive to questions or to keep his or her voice up. At times, I may have asked a question
6 myself. Any questions that I asked, or instructions that I gave, were intended only to clarify the
7 presentation of evidence and to bring out something that I thought might be unclear. You should
8 draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any
9 witness or any party in the case, by reason of any comment, question, or instruction of mine.

10 The rulings I have made during the trial and these instructions are no indication of my views as
11 to what your decision should be. Nor should you infer that I have any views as to the credibility
12 of any witness, as to the weight of the evidence, or as to how you should decide any issue that is
13 before you. That is entirely your role.

14

15 Charts and Summaries

16 The exhibits include certain charts and summaries. As I mentioned to you during trial, I
17 admitted these charts and summaries in place of, or in addition to, the underlying testimony or
18 documents that they purport to represent, in order to save time and avoid unnecessary
19 inconvenience. They are no better than the testimony or the documents upon which they are
20 based. Therefore, you are to give no greater consideration to these charts or summaries than you
21 would give to the evidence upon which they are based. It is for you to decide whether they
22 correctly present the information contained in the testimony and in the exhibits on which they
23 were based.

24

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1 Demonstratives

2 During trial, the parties showed you what are called "demonstratives" — illustrations or
3 reproductions of what the parties consider relevant information in this case. As I previously
4 explained, demonstratives are not evidence. Instead, they were shown to you in order to make
5 other evidence more meaningful and to aid you in considering the evidence. They are no better
6 than the evidence upon which they are based. Therefore, you are to give no greater consideration
7 to these demonstratives than you would give to the evidence upon which they are based.

8 It is for you to decide whether the demonstratives correctly present the information
9 contained in the evidence on which they were based. You may consider the demonstratives if
10 you find that they are of assistance to you in analyzing and understanding the evidence.

11

12 Depositions

13 Some of the testimony before you is in the form of depositions which have been received
14 in evidence. As I previously explained, a deposition is simply a procedure where, prior to trial,
15 the attorneys for one side may question a witness or an adversary party under oath before a court
16 stenographer. This is part of the pretrial discovery, and each side is entitled to take depositions.
17 You may consider the testimony of a witness given at a deposition according to the same
18 standards you would use to evaluate the testimony of a witness given at trial.

19

20 Official Translations

21 Some of the testimony you have heard is from witnesses testifying in foreign languages
22 — French and Russian — with English translation, either in the form of subtitles or live in-court
23 translation. Similarly, some of the exhibits that are in evidence before you have been translated
24 to English from other languages; the parties have stipulated, or agreed, that these translations are

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1 accurate. To the extent that any of you have familiarity with the other languages that you have
2 heard or seen in this case, you must nevertheless base your decisions on the English translations.
3 That is because it is important that all jurors consider the same evidence.

4

5 Credibility of Witnesses

6 How do you evaluate the credibility or believability of the witnesses? The answer is that
7 you use your common sense. There is no magic formula by which you can evaluate testimony.
8 You may use the same tests here that you use in your everyday life when evaluating statements
9 made by others to you. You may ask yourselves: Did the witness impress you as open, honest,
10 and candid? How responsive was the witness to the questions asked on direct examination and
11 on cross-examination?

12 If you find that a witness intentionally told a falsehood, that is always a matter of
13 importance you should weigh carefully. On the other hand, a witness may be inaccurate,
14 contradictory, or even untruthful in some respects and entirely believable and truthful in other
15 respects. It is for you to determine whether such inconsistencies are significant or
16 inconsequential, and whether to accept or reject all of the testimony of any witness, or to accept
17 or reject only portions.

18 You are not required to accept testimony even though the testimony is uncontradicted and
19 the witness's testimony is not challenged. You may reject it because of the witness's bearing or
20 demeanor, because of the inherent improbability of the testimony, or for any other reasons
21 sufficient for you to conclude that the testimony is not worthy of belief.

22 In evaluating the credibility of the witnesses, you should take into account any evidence
23 that a witness may benefit in some way from the outcome of the case. Such an interest in the
24 outcome creates a motive to testify falsely and may sway a witness to testify in a way that

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1 advances his or her own interests. Therefore, if you find that any witness whose testimony you
2 are considering may have an interest in the outcome of this trial, you should bear that factor in
3 mind when evaluating the credibility of his or her testimony and decide whether to accept it with
4 great care.

5 Keep in mind, though, that it does not automatically follow that testimony given by an
6 interested witness is to be disbelieved. There are many people who, no matter what their interest
7 in the outcome of the case may be, would not testify falsely. It is for you to decide, based on
8 your own perceptions and common sense, to what extent, if at all, the witness's interest has
9 affected his or her testimony.

10

11 Prior Inconsistent Statements

12 You have heard evidence that, at some earlier time, a witness may have said something
13 that one or the other party argued was inconsistent with the witness's testimony at trial.

14 Such prior statements are not themselves evidence; instead, they were presented to you
15 for the purpose of helping you decide whether to believe the witness's testimony at trial. If you
16 find that a witness made an earlier statement that conflicts with the witness's trial testimony, you
17 may consider that fact in deciding how much of the witness's trial testimony, if any, to believe.

18 In making this determination, you may consider whether the witness purposely made a
19 false statement or whether it was an innocent mistake; whether the inconsistency concerns an
20 important fact or whether it had to do with a small detail; and whether the witness had an
21 explanation for the inconsistency and, if so, whether that explanation appealed to your common
22 sense.

23 It is exclusively your duty, based upon all the evidence and your own good judgment, to
24 determine whether the prior statement was inconsistent and, if so, how much weight, if any, to

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1 give to the inconsistent statement in determining whether to believe all, or part of, the witness's
2 trial testimony.

3

4 **Knowledge and Conduct of Corporate Employees**

5 A company can act only through its employees. Consequently, when you are considering
6 the substantive rules of law about which I will instruct you, you should understand that a
7 company is generally responsible for the conduct and knowledge of its employees who are acting
8 in the course of, and within the scope of, their duties as employees for the company.

9 That also means that a company can "know" things only through its employees. As a
10 general matter, the knowledge of an individual employee is "imputed" or attributed to his or her
11 employer if the employee acquired the knowledge when he or she was acting within the scope of
12 his or her employment and authority. That is true even if the employee did not formally
13 communicate the information to his or her employer.

14 An employee is acting within the scope of his or her employment and authority if (1) he
15 or she is engaged in the transaction of business that has been assigned to him or her by his or her
16 employer or (2) he or she is doing anything that may reasonably be said to have been
17 contemplated as part of his or her employment. It is not necessary that an act or failure to act
18 was expressly authorized by the employer.

19

20 **Parent Company Responsibility for Subsidiaries**

21 The Defendants in this case, Sotheby's and Sotheby's, Inc., are "parent" companies for
22 other Sotheby's entities called "subsidiaries"; Sotheby's UK is one such subsidiary of both
23 Defendants. To the extent that the Plaintiff alleges conduct by a subsidiary of a Defendant, you
24 must decide whether that Defendant is liable for the actions of its subsidiary.

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1 As a general rule, a corporate parent is not liable for the actions of a subsidiary. But a
2 corporate parent can be held liable for the actions of its subsidiary if the subsidiary was acting as
3 its agent. A subsidiary acts as an agent for a parent company where there is an agreement
4 between the two that the subsidiary will act for the parent, and the parent retains control over the
5 agent. Critical elements of an agency relationship you should consider include whether the
6 parent had the right to control the subsidiary's actions and whether the subsidiary had power to
7 alter legal relations between the parent and third parties, for example by entering into a contract
8 with a third party. The usual markers of a corporate relationship between a parent and a
9 subsidiary — such as the parent's investment in the subsidiary or the parent doing business with
10 the subsidiary — do not, without more, create an agency relationship. I instruct you that federal
11 law requires publicly traded companies to report in their 10-K filings to the Securities and
12 Exchange Commission (also known as the SEC) their earnings and the earnings of their
13 subsidiaries on a consolidated basis. Accordingly, you may not rely on the fact that Sotheby's
14 reported its earnings and the earnings of its subsidiaries in its 10-K filing to the SEC as evidence
15 that its subsidiaries were acting as its agents in this case.

16 In any event, if you find that a subsidiary was acting as an agent for the Defendants in
17 connection with any claim, you may, assuming you find all other elements of those respective
18 claims satisfied, find the Defendants liable for the acts of their subsidiary.

19

20 Expert Witnesses

21 During the trial, you heard testimony from three expert witnesses: Robert Wittman, Guy
22 Stair Sainty, and Harry Smith. As I told you, an expert witness is someone who, by education or
23 experience, has acquired learning or experience in a specialized area of knowledge. Such a
24 witness is permitted to express his opinions on matters about which he has specialized

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1 knowledge and training. A party may present expert testimony to you on the theory that
2 someone who is experienced in the field can assist you in understanding the evidence or in
3 reaching an independent decision on the facts.

4 The opinions stated by each expert were based on particular facts as he himself observed
5 them and testified to them before you, or as he was told by somebody else or as appeared to him
6 from some record or other material. You may reject an expert witness's opinion if you find,
7 from the evidence in this case, that the underlying facts are different from those that formed the
8 basis of the expert's opinion. You may also reject an expert's opinion if, after careful
9 consideration of all the evidence in the case, including expert and other testimony, you disagree
10 with that opinion. In other words, you are not required to accept an expert's opinion to the
11 exclusion of the facts and circumstances disclosed by other evidence. Such an opinion is subject
12 to the same rules concerning reliability as the testimony of any other witness, and it is allowed
13 only to aid you in reaching a proper conclusion.

14 In weighing an expert's opinion, you may consider the expert's qualifications, education,
15 and reasons for testifying, as well as all of the other considerations that ordinarily apply,
16 including all the other evidence in the case. You may give expert testimony whatever weight, if
17 any, you find it deserves in light of all the evidence in this case. You should not, however,
18 accept a witness's testimony merely because he qualifies as an expert. Nor should you substitute
19 an expert's opinion for your own reason, judgment, and common sense. The determination of
20 the facts in this case rests solely with you.

21

22 All Available Evidence Need Not Be Presented

23 The law does not require any party to call as witnesses — whether fact or expert
24 witnesses — all persons who may have been present at any time or place involved in the case or

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1 who may appear to have some knowledge of the matters at issue in this trial. Nor does the law
2 require any party to produce or present as exhibits all papers and things mentioned in the
3 evidence in the case.

4 You are not to rest your decision on what some absent witness who was not brought in
5 might or might not have testified to. Each party had an equal opportunity, or lack of opportunity,
6 to call any of these witnesses. Therefore, you should not draw any inferences or reach any
7 conclusions as to what an absent witness would have testified to had he or she been called. The
8 absence of a witness should not affect your judgment in any way.

9

10 Burden of Proof

11 Before I instruct you on the issues you must decide, I want to define for you the relevant
12 burden of proof. The burden of proof rests at all times with the Plaintiff and, as to the claims
13 with respect to which you will be asked to deliberate, the relevant standard is called clear and
14 convincing evidence.

15 As I told you at the beginning of the trial, proof beyond a reasonable doubt, which is the
16 proper standard of proof in a criminal trial, does not apply to a civil case such as this and you
17 should put it out of your mind. At the beginning of trial, I told you about another standard that
18 applies in some civil cases, called the preponderance of the evidence. That standard does not
19 apply to the claims with respect to which you will be asked to deliberate. Thus, you should put it
20 too out of your mind. The only burden is clear and convincing evidence.

21 Clear and convincing proof leaves no substantial doubt in your mind. It is proof that
22 establishes in your mind not only that the proposition at issue is probable, but also that it is
23 highly probable. It is enough if the Plaintiff establishes its claim beyond any "substantial doubt";
24 it does not have to dispel every "reasonable doubt."

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1

2 II. SUBSTANTIVE ISSUES

3 That completes your general instructions. Let me turn, then, to the law that applies to the
4 issues in this case. As I mentioned before the parties' summations, the claims on which you are
5 to deliberate arise from the Plaintiff's purchases of René Magritte's *Le Domaine d'Arnheim*,
6 Gustav Klimt's *Wasserschlangen II*, Amedeo Modigliani's *Tête*, and Leonardo da Vinci's
7 *Salvator Mundi*. The Plaintiff claims that Defendants aided and abetted Yves Bouvier in
8 committing fraud with respect to each one of these transactions. Defendants deny these claims.

9 As I told you, you will not be asked to deliberate on any claim related to the 2014 auction
10 of Modigliani's *Tête* or as to the claim for aiding and abetting a breach of fiduciary duty with
11 respect to the purchase of da Vinci's *Salvator Mundi*. As I noted earlier, you should not
12 speculate as to why you are not being asked to deliberate about these claims; that is irrelevant for
13 your purposes.

14

15 Aiding and Abetting Fraud: Elements

16 As I just noted, the Plaintiff claims that Defendants aided and abetted fraud with respect
17 to each of the four transactions with respect to which you are to deliberate. You may find that
18 the Plaintiff has met its burden of proof as to all, some, or none of the transactions; a finding in
19 either side's favor with respect to one transaction does not mean that the same finding is
20 necessarily appropriate with respect to the other transactions.

21 In order to prevail on any one of its aiding-and-abetting fraud claims, the Plaintiff has to
22 prove, by clear and convincing evidence, three elements:

23 First, that Mr. Bouvier committed a fraud with respect to the transaction at issue;

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- 1 Second, that the Defendants had actual knowledge of the fraud; and
2 Third, that the Defendants provided substantial assistance to the fraud's commission.

3

4 **First Element: Existence of a Fraud**

5 The first element with respect to each of the transactions at issue that the Plaintiff must
6 prove by clear and convincing evidence is the existence of a fraud — namely, that Mr. Bouvier
7 committed a fraud against the Plaintiff. More specifically, to prove this element, the Plaintiff
8 must establish the following six things by clear and convincing evidence:

- 9 1. First, that Mr. Bouvier made a representation of fact;
10 2. Second, that the representation was false and material;
11 3. Third, that Mr. Bouvier knew it was false or made the representation recklessly
12 without regard for whether it was true or false;
13 4. Fourth, that Mr. Bouvier made the representation to induce the Plaintiff to rely
14 upon it;
15 5. Fifth, that the Plaintiff did justifiably rely upon it; and
16 6. Sixth, that the Plaintiff sustained damages.

17 Let me explain each of these things to you.

18 **1. Representation**

19 The first requirement is that Mr. Bouvier made a representation of fact. A representation
20 is made when, by words or acts, an impression is communicated to the mind of another person.
21 As a general rule, only factual representations are actionable; an opinion or a prediction of
22 something that is hoped or expected to occur in the future will generally not sustain an action for
23 fraud. But if a statement of opinion, whether of law or fact, is misrepresented as a sincere
24 opinion, and it was not sincerely held when made, it can satisfy this requirement.

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1 **2. Materiality and Falsity**

2 A statement of fact is “material” if a reasonable person would consider it important; that
3 is, here, if a reasonable person would consider it important in making decisions regarding how to
4 proceed with or conduct the transaction in question. A statement is false if, taken as a whole, it
5 communicates something that is untrue when considered from the viewpoint of an ordinary
6 person.

7 **3. Knowledge of Falsity or Recklessness**

8 If you find that Mr. Bouvier made a misrepresentation of a material fact related to a
9 particular transaction at issue, you must next decide whether Mr. Bouvier knew that the
10 representation was false or made the representation with reckless disregard as to its truth.

11 Reckless disregard refers to representations made without knowledge of or a genuine
12 belief in their accuracy. It is necessary to distinguish a representation recklessly made with
13 pretense of knowledge from a statement made with honest and reasonable belief in its truth.
14 There cannot be honest belief in a statement purportedly made from knowledge when the maker
15 knows he has no basis for the pretense. By contrast, when the maker has a reasonable basis for
16 belief in the truth of the statement, there is no intent to deceive.

17 **4. Intent to Induce**

18 You must next decide whether the representation was made to induce the Plaintiff to act
19 — for example, to purchase a particular artwork at a particular price.

20 **5. Justifiable Reliance**

21 If you find that Mr. Bouvier did make a misrepresentation to induce the Plaintiff, you
22 must decide whether the Plaintiff was justified in relying on the representation. Whether a
23 person to whom a representation is made is justified in relying upon it to take a particular action

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1 generally depends upon whether the fact represented is one that a reasonable person would
2 believe and consider important in deciding to take that action. Whether a person was justified in
3 relying on any representation also depends on whether a reasonable person under the
4 circumstances would rely on the representation without independent investigation or verification.

5 Reliance is generally not justified if the party claiming reliance had the means available
6 to it of knowing the truth of the subject of the representation, by the exercise of ordinary
7 intelligence, but failed to make use of those means. But if the representation concerned matters
8 that were peculiarly within the knowledge of the party making the representation, reliance may
9 be justified notwithstanding the recipient's lack of further investigation. In determining whether
10 facts are peculiarly within a party's knowledge, you must consider both (1) the sophistication of
11 the one receiving the representation and (2) the accessibility of the underlying information.

12 In making the determination as to justifiable reliance, you may consider factors such as
13 the nature and duration of relationships between the parties involved; the content of any
14 agreements between them; the parties' access to relevant information; the concealment of the
15 fraud and any opportunity to detect the fraud; the sophistication and expertise of the parties,
16 generally and with respect to high-end art transactions specifically; and the complexity and
17 magnitude of the transactions in question. Nevertheless, even sophisticated plaintiffs are not
18 required to conduct their own audit or subject their counterparties to detailed questioning when
19 they have bargained for representations of truthfulness. Ultimately, no single one of the factors I
20 just mentioned is dispositive, and all relevant factors must be considered and balanced.

21 **6. Injury**

22 Finally, if you find that the Plaintiff was justified in relying on a misrepresentation, you
23 must next decide whether it was damaged as a result of the misrepresentation. If you find that

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1 the Plaintiff did not sustain any monetary damages as a result of a misrepresentation, you will
2 find for Defendants on that claim of fraud. If you find that the Plaintiff did sustain any monetary
3 loss as a result of a fraudulent misrepresentation, you must then decide the actual monetary loss
4 the Plaintiff sustained. I will give you further instructions on damages shortly.

5

6 Second Element: Knowledge of the Fraud

7 If you find that the Plaintiff proved by clear and convincing evidence that Mr. Bouvier
8 committed a fraud against the Plaintiff as to a particular transaction, the second element the
9 Plaintiff must prove, again by clear and convincing evidence, is that Defendants had actual
10 knowledge of that fraud. That requires more than “constructive knowledge,” meaning awareness
11 of information that would allow a person exercising reasonable care and diligence to discover the
12 fraud. Mere suspicion of impropriety alone also does not suffice. Facts that are consistent with
13 normal, lawful business practices do not show actual knowledge. Evidence that a defendant
14 processed atypical transactions, without more, is not sufficient to show actual knowledge.

15 However, circumstantial evidence can be enough to show actual knowledge. So, for
16 example, evidence that a defendant actively participated in a fraud, or evidence that a defendant
17 reviewed documents or otherwise had access to information that would have revealed or
18 indicated the fraud, may be sufficient to show actual knowledge. Accordingly, you do not need
19 to find proof that Defendants explicitly acknowledged a fraud, provided that the evidence —
20 taken as a whole — leads you to the conclusion that they had actual knowledge of such fraud.

21 The Plaintiff has argued that the 2015 valuation of the *Salvator Mundi* is evidence of the
22 Defendants’ knowledge of Mr. Bouvier’s alleged fraud in connection with the 2013 sale of that
23 painting. You may consider that evidence and give it whatever weight you conclude it deserves,

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1 but because the valuation postdates the sale of the painting, you may not rely *solely* on the 2015
2 valuation to find that the Defendants had actual knowledge of the alleged fraud in 2013.

3

4 **Third Element: Substantial Assistance in the Fraud**

5 If you find that the Plaintiff proved by clear and convincing evidence that Mr. Bouvier
6 committed a fraud against the Plaintiff as to a particular transaction and that the Defendants had
7 actual knowledge of that fraud, then you must decide whether the Plaintiff has proved, by clear
8 and convincing evidence, that the Defendants provided substantial assistance to Mr. Bouvier in
9 perpetrating the fraud. To find that this element is satisfied, you must find that the Defendants
10 affirmatively acted to assist or help conceal a fraud. You must also find that such act or acts
11 proximately caused injury to the Plaintiff. Proximate cause means that the injury was a direct or
12 reasonably foreseeable result of the act or acts; mere inaction is not enough, but even routine
13 conduct may be sufficient if it made a substantial contribution to the perpetration of the fraud.

14

15 **Knowledge**

16 Let me say a few more things about the Plaintiff's burden to prove that an act was done
17 knowingly or with actual knowledge.

18 The question of whether a person acted with knowledge is a question of fact for you to
19 determine, like any other fact question. Direct proof of a person's state of mind is often not
20 available. It would be a rare case where it could be shown that a person wrote or stated that as of
21 a given time in the past he committed an act with a particular state of mind. Such direct proof is
22 not required. The ultimate fact of knowledge, though subjective, may be established by
23 circumstantial evidence, based upon a person's outward manifestations, his words, his conduct,
24 his acts and all the surrounding circumstances disclosed by the evidence and the rational or

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1 logical inferences that may be drawn from them. Circumstantial evidence, if believed, is of no
2 less value than direct evidence. In either case, however, the Plaintiff must prove its claim, as I
3 have explained, by clear and convincing evidence.

4 In determining whether the Defendants had actual knowledge of a fact, you may consider
5 whether the Defendants had knowledge of a high probability of that fact but deliberately closed
6 their eyes to what would otherwise have been obvious to them. If you find, by clear and
7 convincing evidence, that the Defendants acted with a conscious purpose to avoid learning the
8 truth, then you may find that they acted with actual knowledge. Actual knowledge may not be
9 established, however, by demonstrating that the Defendants were merely negligent, foolish, or
10 mistaken.

11 If you find that the Defendants suspected a fraud and realized its high probability, but
12 refrained from confirming it in order to be able to later deny knowledge, you may find that the
13 Defendants acted with actual knowledge. But if you find that the Defendants actually believed
14 that there was no fraud, you may not find that they acted with actual knowledge.

15 It is entirely up to you whether you find that the Defendants deliberately closed their
16 eyes. But again, it is the Plaintiff's burden to prove actual knowledge by clear and convincing
17 evidence.

18

19 **III. DAMAGES**

20 **Damages Generally**

21 If you conclude that the Plaintiff has proved any or all of its claims by clear and
22 convincing evidence, then you must determine the damages, if any, to which it is entitled. You
23 should not infer that the Plaintiff is entitled to recover damages merely because I am instructing

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1 you as to damages. It is exclusively your function to decide upon liability, and I am instructing
2 you on damages only so that you will have guidance should you decide that they are warranted.

3 The Plaintiff is seeking two categories of damages: "compensatory damages" and
4 "punitive damages." I will first give you instructions regarding compensatory damages and then
5 turn to punitive damages.

6

7 Compensatory Damages

8 Compensatory damages seek to make a plaintiff whole — that is, to compensate it for the
9 injury suffered as a result of the defendant's unlawful conduct. Compensatory damages are not
10 intended to punish a defendant and should not provide the plaintiff with more than what is
11 required to make it whole. Any damages that you award must be fair and reasonable, neither
12 inadequate nor excessive. You should not award compensatory damages based on speculation,
13 but only for those injuries that the Plaintiff has proved by clear and convincing evidence.

14 In awarding compensatory damages, if you do decide to award them, you must be guided
15 by dispassionate common sense. Computing damages may be difficult, but you must not let that
16 difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require
17 that a plaintiff prove the amount of its losses with mathematical precision, but only with as much
18 definiteness and accuracy as the circumstances permit. Nonetheless, damages must be
19 established with reasonable certainty. In all instances, you are to use sound discretion in fixing
20 an award of damages, drawing reasonable inferences where you deem appropriate from the facts
21 and circumstances in evidence.

22 If you find for the Plaintiff on any of its aiding-and-abetting fraud claims, the measure of
23 its damages for that claim is its "out of pocket" loss, if any. "Out of pocket" loss means the
24 difference between the value of the consideration paid by the Plaintiff (that is, the price it paid

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1 for the artwork, whether monetary or otherwise) and the fair market value of the consideration
2 received (that is, the fair market value of the artwork at the time the Plaintiff purchased it). The
3 Plaintiff bears the burden of proving that it suffered "out of pocket" loss with respect to each
4 aiding-and-abetting fraud claim, as well as the values upon which you may base your calculation
5 of the damages to be awarded, if any. You should not consider any potential lost profits that the
6 Plaintiff may have missed out on because of the fraud or any other measure of damages.

7 A recent or contemporaneous sale price — negotiated at arm's length — is generally the
8 best evidence of fair market value. At the same time, you may consider evidence tending to
9 show special circumstances that would negate the relevance of a close-in-time arm's-length
10 purchase price or that a purchase was not in fact negotiated at arm's length. I remind you that
11 you may not consider evidence regarding the 2017 sale price of da Vinci's *Salvator Mundi* in
12 connection with determining the work's fair market value in 2013. Accordingly, evidence of that
13 sale price is irrelevant to the issue of damages to be awarded, if any.

14 Ultimately, the determination of fair market value falls to you, based on the evidence you
15 have seen and heard. As I instructed you earlier, you may find that the Plaintiff is entitled to
16 damages as to all, some, or none of its claims. You must separately determine the appropriate
17 amount of damages, if any, with respect to each individual claim for which you find the
18 Defendants liable.

19

20 Currency

21 For each claim for which you award compensatory damages, you should use the currency
22 in which the relevant transaction took place. That currency is United States Dollars with respect
23 to all claims except for the claim arising out of the Plaintiff's purchase of Modigliani's *Tête*. For

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1 that claim, and that claim only, any damages you award should be in Euros because that claim is
2 based upon a transaction that was in Euros.

3

4 **Punitive Damages**

5 If and only if you award compensatory damages for a particular claim, you may — but
6 are not required to — award punitive damages for that claim as well. You should only award
7 punitive damages if you find that the Defendants' acts were wanton and reckless or malicious.
8 An act is wanton and reckless when it demonstrates conscious indifference and utter disregard of
9 its effect upon the health, safety, and rights of others. An act is malicious when it is done
10 deliberately with knowledge of the plaintiff's rights, and with the intent to interfere with those
11 rights.

12 If you decide punitive damages are warranted, in arriving at your decision as to the
13 amount of punitive damages, you should consider the nature and reprehensibility of what the
14 Defendants did. That would include the character of the wrongdoing, such as: whether the acts
15 were done with an improper motive or vindictiveness; whether the acts constituted outrageous or
16 oppressive intentional misconduct; how long the conduct went on; the Defendants' awareness of
17 what harm the conduct caused or was likely to cause; any concealment or covering up of the
18 wrongdoing; how often the Defendants had committed similar acts of this type in the past, and
19 the actual and potential harm created by the Defendants' conduct.

20 The amount of punitive damages that you award must be both reasonable and
21 proportionate to the actual and potential harm suffered by the Plaintiff and to the compensatory
22 damages you awarded. The reprehensibility of the Defendants' conduct is an important factor in
23 deciding the amount of punitive damages to award that would be reasonable and proportionate.

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- 1 You may also consider the Defendants' financial condition and the impact your punitive
2 damages award will have on the Defendants.

3

4 **IV. CONCLUDING INSTRUCTIONS**

5 **Selection of Foreperson**

6 In a few minutes, you are going to go into the jury room and begin your deliberations.
7 Your first task will be to select a foreperson. The foreperson has no greater voice or authority
8 than any other juror, but is the person who will communicate with me when questions arise and
9 when you have reached a verdict. The foreperson is also who will be asked in open court to pass
10 your completed Verdict Form to me.

11

12 **Sending Notes**

13 You may have questions or comments for me as you deliberate. If you do, you can
14 communicate with me by sending notes using forms and envelopes that you will be provided for
15 that purpose. Your notes to me should be signed by the foreperson and should include the date
16 and time they were sent. They should also be as clear and as precise as possible, as they will
17 become part of the record in this case. Do not tell me or anyone else how you stand on any issue
18 until after a unanimous verdict is reached.

19

20 **Right to See Exhibits and Hear Testimony**

21 All of the exhibits will be given to you near the start of deliberations. Most of it will be
22 provided to you on a laptop that can be connected to a large monitor in the jury room for all to
23 see. When you retire to deliberate, my staff will provide you with instructions on how to access

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1 and display evidence in the jury room. In addition, you will also be provided with a list of all the
2 exhibits that were received into evidence.

3 If you prefer to view any evidence here in the courtroom or if you want any of the
4 testimony submitted to you or read back to you, you may also request that. Keep in mind that if
5 you ask for testimony, however, the court reporter must search through his or her notes, the
6 parties must agree on what portions of testimony may be called for, and if they disagree I must
7 resolve those disagreements. That can be a time-consuming process. So please try to be as
8 specific as you possibly can in requesting portions of the testimony, if you do.

9 Again, your requests for testimony — in fact, any communication with the Court —
10 should be made to me in writing, signed by your foreperson with the date and time, and given to
11 one of the Court Security Officers.

12

13 Juror Note-Taking

14 If any one of you took notes during the course of the trial, you should not show your
15 notes to, or discuss your notes with, any other jurors during your deliberations. Any notes you
16 have taken are to be used solely to assist you. The fact that a particular juror has taken notes
17 entitles that juror's views to no greater weight than those of any other juror. Finally, your notes
18 are not to substitute for your recollection of the evidence in the case. If, during your
19 deliberations, you have any doubt as to any of the testimony, you may — as I just told you —
20 request that the official trial transcript that has been made of these proceedings be submitted or
21 read back to you.

22

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1 Duty to Deliberate

2 The most important part of this case, members of the jury, is the part that you as jurors
3 are now about to play as you deliberate on the issues of fact. I know you will try the issues that
4 have been presented to you according to the oath that you have taken as jurors. In that oath, you
5 promised that you would well and truly try the issues joined in this case and a true verdict render.

6 As you deliberate, please listen to the opinions of your fellow jurors, and ask for an
7 opportunity to express your own views. Every juror should be heard. No one juror should hold
8 the center stage in the jury room and no one juror should control or monopolize the deliberations.
9 If, after listening to your fellow jurors and if, after stating your own view, you become convinced
10 that your view is wrong, do not hesitate because of stubbornness or pride to change your view.
11 On the other hand, do not surrender your honest convictions and beliefs solely because of the
12 opinions of your fellow jurors or because you are outnumbered.

13 Your verdict must be unanimous. If at any time you are not in agreement, you are
14 instructed that you are not to reveal the standing of the jurors — that is, the split of the vote — to
15 anyone, including me, at any time during your deliberations.

16

17 Return of the Verdict

18 We have prepared a Verdict Form for you to use in recording your decisions, a copy of
19 which is attached to these instructions. Do not write on your individual copies of the Verdict
20 Form. My staff will give the official Verdict Form to Juror Number One, who should give it to
21 the foreperson after the foreperson has been selected.

22 As you will see, the Verdict Form is kind of like those old “choose your own adventure”
23 books. Depending on your answer to a question or questions, you will be directed to either
24 answer another question or to sign the Verdict Form. You should draw no inference from the

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1 questions on the Verdict Form as to what your verdict should be. The questions are not to be
2 taken as any indication that I have any opinion as to how they should be answered.

3 When you have completed the Verdict Form, please review your answers to ensure that
4 they accurately reflect your unanimous determinations. If they do, the foreperson should note
5 the date and time and you should all sign the Verdict Form. The foreperson should then give a
6 note — **not** the Verdict Form itself — to the Court Security Officer outside your door, stating
7 that you have reached a verdict. Do not specify what the verdict is in your note. Instead, the
8 foreperson should retain the Verdict Form and hand it to me in open court when I ask for it.

9 I will stress again that **all** of you must be in agreement with the verdict that is announced
10 in court. Once your verdict is announced in open court and officially recorded, it cannot
11 ordinarily be revoked.

12

13 **Closing Comments**

14 Finally, I say this, not because I think it is necessary, but because it is the custom in this
15 courthouse to say it: You should treat each other with courtesy and respect during your
16 deliberations.

17 All litigants stand equal in this room. All litigants stand equal before the bar of justice.
18 All litigants stand equal before you. Your duty is to decide between these parties fairly and
19 impartially, and to see that justice is done.

20 Under your oath as jurors, you are not to be swayed by sympathy or prejudice. You
21 should be guided solely by the evidence presented during the trial and the law as I gave it to you,
22 without regard to the consequences of your decision. You have been chosen to try the issues of
23 fact and to reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy
24 or prejudice interfere with your clear thinking, there is a risk that you will not arrive at a just

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1 verdict. All parties to a civil lawsuit are entitled to a fair trial. You must make a fair and
2 impartial decision so that you will arrive at a just verdict.

3 Members of the jury, I ask your patience for a few moments longer. It is necessary for
4 me to spend a few moments with the lawyers and the court reporter at the side bar. I will ask you
5 to remain patiently in the jury box, without speaking to each other, and we will return in just a
6 moment to submit the case to you. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
ACCENT DELIGHT INTERNATIONAL LTD., :
:
Plaintiff, : 18-CV-9011 (JMF)
:
:
-v- :
: VERDICT FORM
SOTHEBY'S, INC. et al., :
:
Defendants. :
:
----- X

PLEASE CIRCLE YOUR ANSWERS
All Answers Must Be Unanimous

1. Did the Plaintiff prove, by clear and convincing evidence, that the Defendants aided and abetted fraud with respect to the Plaintiff's purchase of Magritte's *Le Domaine d'Arnheim*?

YES NO

2. Did the Plaintiff prove, by clear and convincing evidence, that the Defendants aided and abetted fraud with respect to the Plaintiff's purchase of Klimt's *Wasserschlangen II*?

YES NO

3. Did the Plaintiff prove, by clear and convincing evidence, that the Defendants aided and abetted fraud with respect to the Plaintiff's purchase of Modigliani's *Tête*?

YES NO

4. Did the Plaintiff prove, by clear and convincing evidence, that the Defendants aided and abetted fraud with respect to the Plaintiff's purchase of da Vinci's *Salvator Mundi*?

YES NO

[If you answer NO to Questions 1 through 4, skip the remaining questions and proceed directly to sign the Verdict Form. If you answer YES to any one of the four above questions, proceed to the next set of questions.]

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[Answer Question 5 only if you answered YES to Question 1. If you answered NO to Question 1, turn to the next page.]

5. Did the Plaintiff prove, by clear and convincing evidence, that it is entitled to compensatory damages with respect to its aiding and abetting fraud claim concerning the purchase of Magritte's *Le Domaine d'Arnheim*?

YES NO

[If you answer NO to Question 5, skip the next two questions and turn to the next page. If you answer YES to Question 5, answer Questions 6 and 7.]

6. What is the amount of compensatory damages you award the Plaintiff with respect to this claim?

\$ _____

7. What is the amount of punitive damages, if any, you award the Plaintiff with respect to this claim?

\$ _____

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[Answer Question 8 only if you answered YES to Question 2. If you answered NO to Question 2, turn to the next page.]

8. Did the Plaintiff prove, by clear and convincing evidence, that it is entitled to compensatory damages with respect to its aiding and abetting fraud claim concerning the purchase of Klimt's *Wasserschlangen II*?

YES NO

[If you answer NO to Question 8, skip the next two questions and turn to the next page. If you answer YES to Question 8, answer Questions 9 and 10.]

9. What is the amount of compensatory damages you award the Plaintiff with respect to this claim?

\$ _____

10. What is the amount of punitive damages, if any, you award the Plaintiff with respect to this claim?

\$ _____

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[Answer Question 11 only if you answered YES to Question 3. If you answered NO to Question 3, turn to the next page.]

11. Did the Plaintiff prove, by clear and convincing evidence, that it is entitled to compensatory damages with respect to its aiding and abetting fraud claim concerning the purchase of Modigliani's *Tête*?

YES NO

[If you answer NO to Question 11, skip the next two questions and turn to the next page. If you answer YES to Question 11, answer Questions 12 and 13.]

12. What is the amount of compensatory damages (in Euros) you award the Plaintiff with respect to this claim?

€_____ (Euros)

13. What is the amount of punitive damages (in U.S. dollars), if any, you award the Plaintiff with respect to this claim?

\$_____ (U.S. Dollars)

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[Answer Question 14 only if you answered YES to Question 4. If you answered NO to Question 4, skip the remaining questions and proceed directly to sign the Verdict Form.]

14. Did the Plaintiff prove, by clear and convincing evidence, that it is entitled to compensatory damages with respect to its aiding and abetting fraud claim concerning the purchase of da Vinci's *Salvator Mundi*?

YES NO

[If you answer NO to Question 14, skip the remaining questions and proceed directly to sign the Verdict Form. If you answer YES to Question 14, answer Questions 15 and 16.]

15. What is the amount of compensatory damages you award the Plaintiff with respect to this claim?

\$ _____

16. What is the amount of punitive damages, if any, you award the Plaintiff with respect to this claim?

\$ _____

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Please review your answers to all of the Questions above to ensure that they accurately reflect your unanimous determinations. When you have done so, sign your names below, fill in the date and time, and inform the Court Security Officer — with a note, not the Verdict Form itself — that you have reached a verdict.

After completing the form, each juror who agrees with this verdict must sign below:

Foreperson

Date: _____

Time: _____